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Steven Viavant

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SUITE 550

SAN JOSE, CA 95110-1083

EXAMINER

DIVECHA, KAMAL B

ART UNIT

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/945,160	<b>Applicant(s)</b> VIAVANT ET AL.	
	<b>Examiner</b> KAMAL B. DIVECHA	<b>Art Unit</b> 2151	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 July 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 86-171 is/are pending in the application.
- 4a) Of the above claim(s) 120-128 and 163-171 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 86-119 and 129-162 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>20080813</u> .  | 6) <input type="checkbox"/> Other: _____                          |

**DETAILED ACTION**

This Action is in response to communications filed 7/23/08.

Claims 86-171 are pending in this application.

Claims 1-86 are cancelled in response filed 7/23/08.

Claims 86-171 are newly added claims.

**Continued Examination Under 37 CFR 1.114**

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), **was filed 7/23/08** in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 7/23/08 has been entered.

However, newly added claims are subject of Restriction/Election requirements as follows:

**Election/Restrictions**

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 86-119, 129-162, are drawn to measuring client-side performance through an inserted code in a document, classified in class 709, subclass 224.
- II. Claims 120-128, 163-171, are drawn to modifying and presenting the modified document to a user, classified in class 709, subclass 246.

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The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct if they do not overlap in scope and are not obvious variants, and if it is shown that at least one subcombination is separately usable. In the instant case, subcombination II has separate utility such as transmitting a modified documents to clients. See MPEP § 806.05(d).

The examiner has required restriction between subcombinations usable together. Where applicant elects a subcombination and claims thereto are subsequently found allowable, any claim(s) depending from or otherwise requiring all the limitations of the allowable subcombination will be examined for patentability in accordance with 37 CFR 1.104. See MPEP § 821.04(a). Applicant is advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application.

Restriction for examination purposes as indicated is proper because all these inventions listed in this action are independent or distinct for the reasons given above and there would be a serious search and examination burden if restriction were not required because one or more of the following reasons apply:

- (a) the inventions have acquired a separate status in the art in view of their different classification;
- (b) the inventions have acquired a separate status in the art due to their recognized divergent subject matter;

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- (c) the inventions require a different field of search (for example, searching different classes/subclasses or electronic resources, or employing different search queries);
- (d) the prior art applicable to one invention would not likely be applicable to another invention;
- (e) the inventions are likely to raise different non-prior art issues under 35 U.S.C. 101 and/or 35 U.S.C. 112, first paragraph.

**Applicant is advised that the reply to this requirement to be complete must include (i) an election of a invention to be examined even though the requirement may be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.**

The election of an invention may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse. Traversal must be presented at the time of election in order to be considered timely. Failure to timely traverse the requirement will result in the loss of right to petition under 37 CFR 1.144. If claims are added after the election, applicant must indicate which of these claims are readable on the elected invention.

If claims are added after the election, applicant must indicate which of these claims are readable upon the elected invention.

Should applicant traverse on the ground that the inventions are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions to be obvious variants or clearly admit on the record that this is the case. In either

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instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

**During a telephone conversation with Karl T. Rees on 9/5/08** a provisional election was made **without traverse to prosecute the invention of Group I**, claims 86-119 and 129-162. Affirmation of this election must be made by applicant in replying to this Office action.

Claims 120-128 and 163-171 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Thus, claims 86-119 and 129-162 are pending and presented for examination.

**Information Disclosure Statement**

The information disclosure statement (IDS) submitted on 8/13/08 was filed after the mailing date of the final rejection on 4/23/08. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

**Claim Rejections - 35 USC § 112**

The following is a quotation of the **first paragraph of 35 U.S.C. 112**:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

1. Claims 91, 98, 99, 134, 141 and 142 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement.

Dependent claim 91 recites:

The method of claim 90, wherein sending a cookie to at least one of the server device or the intercepting device occurs without a user at the client device requesting a new item.

However, there is no disclosure and/or suggestions in the specification for the amendatory claim language.

In fact, the specification teaches sending a cookie to the server when the user requests a new page from the server, i.e. new item, e.g. pg. 26 lines 10-19.

Dependent claim 98 recites:

The method of claim 96...while loading the modified initial item: determining that the client device does not store data indicating a request time for the initial item...

There is simply no teaching and/or suggestions in the original specification of the fact as presented in claim 96.

At best, the specification suggests the determination of whether a cookie exists for the application, e.g. pg. 38 lines 15-26. However, the two processes are completely different.

Dependent claim 99 recites:

The method...prior to intercepting the item in transit, at the intercepting process: determining that the client device does not store data indicating a request time...

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In addition to reasons set forth above, the original specification fails to teach and/or suggest implementing the process of the determining at the intercepting process at the intercepting device.

As such, the claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

**35 USC § 101 - Claim Interpretation**

The **computer-readable storage medium** as in the claims is interpreted as physical medium such as CD-ROM, RAM, PROM, Hard disk.

The computer-readable storage medium **does not** include any of the transmission media as disclosed in specification, pg. 51 lines 26 to pg. 52 line 2.



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**Claim Rejections - 35 USC § 103**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

2. Claims 86-87, 95-98, 100-108, 111-116, 118-119, 129-130, 138-141, 143-151, 154-159 and 161-162 are rejected under 35 U.S.C. 103(a) as being unpatentable over Elnozahy et al. (hereinafter Elnozahy, U. S. Patent No. 6,792,459 B2) in view of Russell et al. (hereinafter Russell, US 2002/0099818 A1).

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As per claim 86, Elnozahy discloses a method for measuring client-side performance, the method comprising the steps of:

a server process, wherein a server process is a process other than the intercepting process, executing at the server device (fig. 1 item #110, col. 5 L42-67: host server);

based on an item, generating a modified item by modifying the item to include a code (col. 4 L60 to col. 5 L8, col. 5 L17-25) which causes one or more processors on the client device to perform the steps of:

measuring performance related to a service associated with the item (col. 4 L60 to col. 5 L8, col. 5 L17-25),

performing one or more acts based on a measurement resulting from said step of measuring performance (col. 6 L10-19, fig. 1: report is sent based on measurement); and

sending the modified item to the client device (fig. 1: Instrumented web pages are sent to the user's client, col. 6 L10-12).

However, Elnozahy does not disclose at an intercepting process executing on either an intercepting device or a server device, intercepting an item that is in transit from a server process to a client device, prior to the arrival of the item at the client device.

Russell, from the same field of endeavor explicitly discloses at an intercepting process executing on either an intercepting device or a server device, intercepting an item that is in transit from a server process to a client device, prior to the arrival of the item at the client device (pg. 7 [0081]: inserting the codes dynamically by using web server plug in as it is delivered, i.e. the plug in intercepts the item and inserts the code as it is delivered, or, by using http proxy. Proxy devices are known for its intercepting processes).

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Therefore, it would have been obvious to a person of ordinary skilled in the art at the time the invention was made to modify Elnozahy in view of Russell in order to intercept an item to modify the item at the intercepting process executing either on intercepting device or server device.

One of ordinary skilled in the art would have been motivated because it would have allowed modifying the items dynamically (Russell: pg. 7 [0081]).

As per claim 87, Elnozahy discloses the method wherein measuring performance related to a service associated with the item comprises measuring a number of events, the events including at least a plurality of cursor events, focus events **or** change events (i.e. clicking on a link events, col. 4 L33-59, col. 6 L10-20: certain events, col. 7 L1-46: cursor including clicking events).

As per claim 95, Elnozahy discloses the method wherein the one or more acts based on a measurement resulting from said step of measuring performance comprise reporting the measured performance to one of the server device or the intercepting device (col. 7 L30-45, col. 8 L15-27, L5—61).

However, Elnozahy does not disclose the process of correlating the measured performance at the client device with one or more metrics of server side performance.

Russell discloses the process of correlating the measured performance at the client device with the one or more metrics of server side performance (pg. 17 [0114-0116]).

Therefore, it would have been obvious to a person of ordinary skilled in the art at the time the invention was made to modify Elnozahy in view of Russell in order to correlate the measured performance with one or more metrics of server side performance.

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One of ordinary skilled in the art would have been motivated because it would have determined a system/network latency (Russell: pg. 17 [0114], [0116]).

As per claim 96, Elnozahy discloses the method further comprising based on the initial item, generating a modified initial item by modifying the initial item to include initial code which causes one or more processors on the client device perform the step of recording a time at which the client device requests the item, and sending the modified initial to the client device (col. 5 L9-41, col. 7 L1-30).

However, Elnozahy does not disclose the process wherein prior to intercepting the item in transit, at the intercepting process, intercepting an initial item in transit from the server process to the client device, prior to the arrival of the initial item at the client device.

Russell, from the same field of endeavor explicitly discloses at an intercepting process executing on either an intercepting device or a server device, intercepting an item that is in transit from a server process to a client device, prior to the arrival of the item at the client device (pg. 7 [0081]: inserting the codes dynamically by using web server plug in as it is delivered, i.e. the plug in intercepts the item and inserts the code as it is delivered, or, by using http proxy. Proxy devices are known for its intercepting processes).

Therefore, it would have been obvious to a person of ordinary skilled in the art at the time the invention was made to modify Elnozahy in view of Russell in order to intercept an initial item prior to intercepting the item in transit to modify the initial item.

One of ordinary skilled in the art would have been motivated in order to measure the response times of the items (Elnozahy: col. 5 L9-41).

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As per claim 97, Elnozahy discloses the method wherein recording the time at which the client device requests the item occurs in response to a user at the client device selecting a control that links to the item (col. 7 L1-30).

As per claim 98, Elnozahy discloses the method wherein the initial item is the item, wherein the initial code further causes the one or more processors on the client device to perform the steps of constructing a page to be loaded at the client device in place of the modified initial item, said page being different than the modified initial item (col. 5 L9-25), wherein the page includes code that causes the one or more processors on the client device to perform the steps of automatically requesting the item from one of the server device or the intercepting device and recording data indicating a time at which the item was requested (col. 5 L9-25, col. 8 L55-57, col. 5 L9-41, col. 7 L1-30).

However, Elnozahy does not disclose the process wherein while loading the modified initial item, determining that the client device does not store data indicating a request time for the initial item.

Russell discloses the process of determining that the client device does not store data indicating a request time for the initial item (pg. 7 [0085]).

Therefore, it would have been obvious to a person of ordinary skilled in the art at the time the invention was made to modify Elnozahy in view of Russell in order to determine that the client device does not store data indicating a request time for the initial item while loading the modified initial item.

One of ordinary skilled in the art would have been motivated in order to enable storing the measurement data.

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As per claim 100, Elnozahy does not disclose the process of determining a percentage of total items sent to the client process, determining based upon the percentage of total items sent to the client process that one of the item or the initial item is to be modified, and wherein modifying the item occurs in response to determining, based upon the percentage of total items send to the client process.

Russell discloses a technique, i.e. applying probability function in collecting and transferring the measurement data (pg. 9 [0089]: i.e. Russell discloses a technique, wherein the technique determines the percentage of total items and applying the desired percentage of the total items in collecting and transferring the measurement data).

Therefore, it would have been obvious to a person of ordinary skilled in the art at the time the invention was made to modify Elnozahy in view of Russell in order to modify only a desired percentage of the total items.

One of ordinary skilled in the art would have been motivated because it would have reduced the processing load on the data center, servers and/or intercepting devices (Russell: pg. 9 [0089]).

As per claim 102, Elnozahy discloses the method wherein the item is an item in a frameset and the steps of measuring performance related to a service associated with the item and performing one or more acts based on a measurement resulting from said step of measuring performance occur in response to determining that all other items in the frameset have been loaded (col. 7 L1-30, col. 9 L1-26; Russell: pg. 15 [0099], [0104], [0108], [0109]).

As per claim 103, Elnozahy discloses the method further comprising the steps of receiving, over a network, data indicating the measurement from the client device (col. 8 L15-27,

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L58-67); determining whether the data indicates performance has fallen below a threshold (col. 9 L44-54, col. 2 L61 to col. 3 L7); and if the data indicates performance has fallen below the threshold, then sending a notification message (col. 9 L44-54, col. 2 L61 to col. 3 L7; Russell: pg. 7 [0081], pg. 9 [0088]).

As per claim 104, Elnozahy discloses the method wherein the step of performing one or more acts based on the measurement further comprises determining whether the measurement indicates performance has fallen below a threshold (col. 9 L44-54, col. 2 L61 to col. 3 L7); and if the data indicates performance has fallen below the threshold, then sending a notification message (col. 9 L44-54, col. 2 L61 to col. 3 L7).

As per claim 105, Elnozahy discloses the method wherein said step of sending a notification message comprising sending the notification message to an administrator for a server device associated with said service (fig. 1 item #109, 110 and col. 9 L1-67, col. 6 L10-19).

As per claim 106, Elnozahy does not disclose the method wherein step of sending notification message comprises sending the notification message to a user of the client process.

But, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify Elnozahy in order to notify the user of the client process since Elnozahy teaches notifying the host server and/or verifying agent's server.

One of ordinary skill in the art would have been motivated in order to notify the user of the perceived response times.

As per claim 107, Elnozahy discloses the method wherein the measurement is a client response time between a first time when a user of the client process selects an item on a first web

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page rendered on a display of the client device and a second time when a second web page is fully rendered on the display of the client device (fig. 5, col. 7 L1-46).

As per claim 108, Elnozahy discloses the method wherein processing of the code by the one or more processors at the client device causes collecting ancillary information relating to one or more components of the client process that participate in obtaining the service from the application program and the at the client device performing one or more acts based on the measurement includes correlating the measurement with the ancillary information (fig. 1 item #195, fig. 3 item #260, item #250, fig. 5 item #565 and fig. 6 item #670).

As per claim 111, Elnozahy discloses the method wherein the item to be sent to the client process is stored in a cache before the item is sent to the client process (fig. 1 item #115, 131-133); said step of intercepting the item comprises accessing the item in the cache and said step of sending the modified item to the client process comprises replacing the item in cache with the modified item (fig. 1 and col. 6 L1-10).

As per claim 112, Elnozahy discloses the method wherein the cache is on the server device (fig. 1 item #110, 115 and col. 6 L1-10).

As per claim 113, Elnozahy does not disclose the method wherein the cache is on a proxy server for the client process.

Russell explicitly discloses a proxy server for the client process (pg. 7 [0081]).

Therefore, it would have been obvious to a person of ordinary skilled in the art at the time the invention was made to modify Elnozahy in view of Russell in order to implement a cache on a proxy server.



One of ordinary skilled in the art would have been motivated because a proxy server improves the network performance by reducing the response times.

As per claim 114, Elnozahy discloses the method wherein the item includes hypertext markup language (HTML) statements (col. 2 L25-36, fig. 1 item #160, col. 4 L20-32).

As per claim 115, Elnozahy discloses the method wherein the code comprises javascript statements (col. 4 L20-59).

As per claim 116, Elnozahy discloses the method wherein the code comprises a Java applet (col. 2 L25-36).

As per claim 118, Elnozahy discloses the method wherein the client device comprises a web browser at which the item is received and at which the code is executed (col. 2 L25-36, fig. 1 item #160, col. 4 L20-32).

As per claim 119, Elnozahy discloses the method further comprising the steps of receiving, over a network, data indicating the measurement from the client device (col. 8 L15-27, L58-67); determining whether the data indicates performance problem, the performance problem being that performance has fallen below a threshold (col. 9 L44-54, col. 2 L61 to col. 3 L7); and if the data indicates performance has fallen below the threshold, then sending a notification message (col. 9 L44-54, col. 2 L61 to col. 3 L7; Russell: pg. 7 [0081], pg. 9 [0088]).

However, Elnozahy does not disclose the process wherein if the data indicates performance has fallen below the threshold, then, based at least on the data and one or more metrics of server-side performance, determining whether the performance problem is attributable to the server device, or one of the client device and a network connected to the client device to the server device.

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Russell suggests the process wherein based at least on the data and one or more metrics of server-side performance, determining whether the performance problem is attributable to the server device, or one of the client device and a network connected to the client device to the server device (pg. 9 [0088], pg. 17 [0114-0116]).

Therefore, it would have been obvious to a person of ordinary skilled in the art at the time the invention was made to modify Elnozahy in view of Russell in order to determine the performance problem based on the client side data and server side metrics.

One of ordinary skilled in the art would have been motivated because it would have determined condition of a distributed application, system and/or server (Russell: pg. 9 [0087], pg. 17 [0114, 0117]).

As per claims 101, 129-130, 138-141, 143-151, 154-159 and 161-162, they do not teach or further define over the limitations in claims 86-87, 95-98, 100, 102-108, 111-116 and 118-119. Therefore, claims 101, 129-130, 138-141, 143-151, 154-159 and 161-162 are rejected for the same reasons as set forth in claims 86-87, 95-98, 100, 102-108, 111-116 and 118-119.

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3. Claims 88-94 and 131-137 are rejected under 35 U.S.C. 103(a) as being unpatentable over Elnozahy et al. (hereinafter Elnozahy, U. S. Patent No. 6,792,459 B2) in view of Russell et al. (hereinafter Russell, US 2002/0099818 A1), and further in view of "Official Notice".

As per claim 88, Elnozahy discloses the method wherein the one or more acts based on a measurement resulting from said step of measuring performance comprise, determining that a measured performance is below a threshold of minimum performance (col. 9 L60-65).

However, Elnozahy does not disclose the process wherein in response to the determining step, sending a request to either the server device or intercepting device for a revised item and receiving the revised item.

But, sending a request for a revised item and receiving the revised item is fairly known in the art. Official Notice is taken.

Therefore, it would have been obvious to a person of ordinary skilled in the art at the time the invention was made to modify Elnozahy and Russell in order to send a request for a revised item.

One of ordinary skilled in the art would have been motivated because it would have produced measurement data for various items.

As per claim 89, Elnozahy discloses the method wherein the threshold of minimum performance is associated with a maximum acceptable response time (col. 9 L27-67).

As per claim 90, Elnozahy discloses the method wherein the one or more acts based on a measurement resulting from said step of measuring performance comprise, recording data indicating the measurement in a cookie and sending the cookie to at least one of the server device or the intercepting device (col. 8 L58-67).

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As per claim 91, Elnozahy does not disclose the method wherein sending the cookie to at least one of the server device or intercepting device occurs without a user at the client device requesting a new item.

But, sending a cookie without user requesting new item, i.e. new website, is known in the art. In other words, user only sends cookies in response to a page in the current frameset or website, and whenever user requests new website, new website sends its own cookie.

Therefore, it would have been obvious to a person of ordinary skilled in the art at the time the invention was made to modify, if necessary, Elnozahy in order to send the cookie without user requesting new item.

One of ordinary skilled in the art would have been motivated because this is how cookies work.

As per claim 92, Elnozahy discloses the method wherein the one or more acts based on a measurement resulting from said step of measuring performance further comprises requesting an image file from one of the intercepting device or the server device and wherein sending the cookie to at least one of the server or intercepting device occurs as a consequence of requesting the image file from one of the intercepting device or the server device (col. 9 L27-43, col. 8 L58-67).

As per claim 93, Elnozahy does not disclose the method wherein the image file is an image file with no data.

But, image file with no data is fairly known in the art such as dummy file used for various purposes. Official Notice is taken.

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Therefore, it would have been obvious to a person of ordinary skilled in the art at the time the invention was made to modify Elnozahy in order to request an image file with no data.

One of ordinary skilled in the art would have been motivated so that the cookie with the measurement data can be sent to the server device.

As per claim 94, Elnozahy discloses the method wherein the code causes performance of the act of requesting an image file from one of the intercepting or server device in response to detecting that the item is completely loaded in a client process at the client device (fig. 5, col. 7 L1-46).

As per claims 131-137, they do not teach or further define over the limitations in claims 88-94. Therefore, claims 131-137 are rejected for the same reasons as set forth in claims 88-94.

4. Claims 99 and 142 are rejected under 35 U.S.C. 103(a) as being unpatentable over Elnozahy et al. (hereinafter Elnozahy, U. S. Patent No. 6,792,459 B2) in view of Russell et al. (hereinafter Russell, US 2002/0099818 A1), and further in view Peiffer et al. (hereinafter Peiffer, US 6,834,297 B1).

As per claim 99, Elnozahy discloses the method wherein the initial item is the item, and wherein the method further comprises, wherein modifying the initial item comprises replacing at least some of the content of the initial item with place-holding content (col. 5 L1-41: instrumenting with uninstrumented page), wherein the modified initial code further causes the one or more processors on the client device to perform the steps of: recording data indicating a time at which the item was requested (col. 5 L9-25, col. 8 L55-57, col. 5 L9-41, col. 7 L1-30: code that records time).

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However, Elnozahy does not disclose the process of prior to intercepting the item in transit, at the intercepting process, determining that the client device does not store data indicating a request time for the initial item and automatically requesting the item from one of the server or intercepting device.

Russell discloses the process of determining that the client device does not store data indicating a request time for the initial item (pg. 7 [0085]).

Therefore, it would have been obvious to a person of ordinary skilled in the art at the time the invention was made to modify Elnozahy in view of Russell in order to determine that the client device does not store data indicating a request time for the initial item while loading the modified initial item.

One of ordinary skilled in the art would have been motivated in order to enable storing the measurement data.

However, Elnozahy in view of Russell does not disclose automatically requesting the item from one of the server or intercepting device.

Peiffer discloses the process of modifying the item comprising replacing at least some of the content of the initial item with place-holding content which causes automatically requesting the item from one of the server (fig. 8 item #136, col. 10 L20-47).

Therefore, it would have been obvious to a person of ordinary skilled in the art at the time the invention was made to modify Elnozahy and Russell in view of Peiffer in order to automatically request the item from the one of the server.

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One of ordinary skilled in the art would have been motivated because it would have enabled measurement and reporting the measured data with respect to the original link (Elnozahy: col. 5 L1-25).

As per claim 142, it does not teach or further define over the limitations in claims 99. Therefore, claim 142 is rejected for the same reasons as set forth in claim 99.

5. Claims 109, 110, 117, 152-153 and 160 are rejected under 35 U.S.C. 103(a) as being unpatentable over Elnozahy et al. (hereinafter Elnozahy, U. S. Patent No. 6,792,459 B2) in view of Russell et al. (hereinafter Russell, US 2002/0099818 A1), and further in view of Guthrie (U. S. Patent No. 6,266,681 B1).

As per claim 109, Elnozahy and Russell does not disclose the method further comprising the steps of determining a type associated with the item produced by the application and determining whether to perform said step of modifying the item based on the type of the item.

Guthrie discloses the process of intercepting the item and determining the type associated with the item and determining whether to perform modification of the item based on the type of item (col. 6 L25-40, col. 10 L52 to col. 11 L6).

Therefore, it would have been obvious to a person of ordinary skilled in the art at the time the invention was made to incorporate the teaching of Guthrie as stated above with Elnozahy and Russell in order to make a determination whether to perform the process of modifying the item based on the type associated with the item.

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One of ordinary skilled in the art would have been motivated because it would have determined what type of code the clients browser would support and what code to inject into the item or the document (Guthrie, col. 11 L1-6).

As per claim 110, Elnozahy in view of Russell does not disclose the process of determining a unique reference associated with the item and determining whether to perform said step of modifying the item based on whether the unique reference matches a particular reference, after intercepting the item and before modifying the item.

Guthrie discloses the process of determining the unique reference associated with the item and determining whether to perform the step of modifying the item based on whether the unique reference matches a particular reference (col. 6 L25-40, col. 10 L52 to col. 11 L6).

Therefore, it would have been obvious to a person of ordinary skilled in the art at the time the invention was made to incorporate the teaching of Guthrie as stated above with Elnozahy and Mortensen, in order to make a determination of modifying the item based on a unique reference.

One of ordinary skilled in the art would have been motivated because of the same reasons as set forth in claim 109.

As per claim 117, Elnozahy in view of Russell does not disclose the process wherein the code comprises an ActiveX module.

Guthrie explicitly discloses the process of intercepting the HTML documents and modifying the html documents to include a code, wherein the code includes ActiveX component (col. 11 L1-49).



Therefore, it would have been obvious to a person of ordinary skilled in the art at the time the invention was made to incorporate the teaching of Guthrie with Elnozahy in order to include ActiveX modules.

One of ordinary skilled in the art would have been motivated so that the code can be inserted in a form of ActiveX component into the HTML document (Guthrie, col. 11 L1-32, col. 6 L41-67).

As per claims 152-153 and 160, they do not teach or further define over the limitations in claims 109, 110 and 117. Therefore, claims 152-153 and 160 are rejected for the same reasons as set forth in claims 109, 110 and 117.

#### **Additional References**

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- a. Housel, III et al., US 6,003,087: discloses server-side Interceptor module, See Fig. 2.
- b. Barrick, Jr. et al., US 6,006,260: Evaluating service to a user over the Internet.
- c. Rosborough, U. S. Patent No. 5,764,912: Method and Apparatus for Determining Response time in Computer Applications.
- d. Yee et al., U. S. Patent No. 5,872,976: Client-based system for monitoring the Performance of Application programs.
- e. Abbott et al., U. S. Patent No. 6,314,463 B1: Method and System for Measuring Queue Length and Delay.

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- f. Elnozahy et al., Pub. No.: US 2002/0112049 A1: Measuring Response Time for a Computer accessing Information from a network.

### **Conclusion**

The teachings of the prior art should not be restricted and/or limited to the citations by columns and line numbers, as specified in the rejection. Although the specified citations are representative of the teachings of the art and are applied to specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant in preparing responses, to fully consider the references in its entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

In the case of amendments, Applicant is respectfully requested to indicate the portion(s) of the specification which dictate(s) the structure relied on for proper interpretation and support, for ascertaining the metes and bounds of the claimed invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KAMAL B. DIVECHA whose telephone number is (571)272-5863. The examiner can normally be reached on Increased Flex Work Schedule.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Follansbee can be reached on 571-272-3964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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